

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

SA.No. 305 of 1994(C)

(AGAINST THE JUDGMENT AND DECREE OF THE SUBORDINATE
JUDGE, HOSDURG IN A.S.NO.32/90 DATED 22/11/93 OF
SUB COURT, HOSDURG IN OS.210/1989 OF MUNSIFF COURT,
HOSDURG DATED 31/03/90)

APPELLANT: APPELLANT:PLAINTIFF:

KUTHIRUMMAL POKKAI,
AGED 70 YEARS, S/O.CHANDAN,
AGRICULTURIST, RESIDING AT KUTTAMATH OF
CHERUVATHUR VILLAGE, HOSDURG TALUK,
KASARAGOD DISTRICT.

BY ADV. SRI.K.SHRIHARI RAO
SRI.K.R.RAGHUNATH

RESPONDENTS:RESPONDENT:DEFENDANT:

KUTHIRUMMAL KUNHAMBU,
AGED 70 YEARS, S/O.KUMBA,
AGRICULTURIST, RESIDING AT NHANAMKAL,
CHERUVATHUR VILLAGE, HOSDURG TALUK,
KASARAGOD DISTRICT.- (D I E D) – LR'S IMPEADED:

*SUPPLEMENTAL R2 TO R8 ARE IMPEADED:

R2. CHIRUDHA,
W/O.LATE KUTHIRUMMAL KUNHAMBU,
NHANAMKAI, CHERUVATHUR VILLAGE AND POST,
HOSDURG TALUK, KASARAGOD DISTRICT.

S.A.NO.305/1994

- R3. KUNHIRAMAN,
S/O.LATE KUTHIRUMMAL KUNHAMBU,
NHANAMKAI, CHERUVATHUR VILLAGE AND POST,
HOSDURG TALUK, KASARAGOD DISTRICT.
- R4. NARAYANI KAPPANAKKAL,
D/O.LATE KUTHIRUMMAL KUNHAMBU,
PALATHARA, P.O. THIMIRI, KASARAGOD DISTRICT.
- R5. MADHAVI KAPPANAKKAL,
D/O.LATE KUTHIRUMMAL KUNHAMBU,
W/O.KRISHNAN, NEAR RAILWAY GATE,
P.O.CHERUVATHUR, KASARAGOD DISTRICT.
- R6. CHANDRAMATHI PANDARAPURAYIL,
W/O.KRISHNAN, C/O.CHIKKU RICE AND OIL MILL, KAYYOOR,
P.O. KAYYOOR, KASARAGOD DISTRICT.
- R7. THAMBAI KAPPANAKKAL,
W/O.RAMAN, P.O.CHEEMENI, (VIA) THRIKARUPUR,
KASARAGOD DISTRICT.
- R8. THANGAMANI, GRAND DAUGHTER OF LATE KUTHIRUMMAL
KUNHAMBU, D/O.KALYANI, CHERUVATHUR P.O.,
KASARAGOD DISTRICT.

*SUPPLEMENTAL RESPONDENTS 2 TO 8 ARE IMPEADED AS
THE LRS OF DECEASED SOLE RESPONDENT AS PER ORDER
DTD. 7/07/05 IN C.M.P.NO.1740/97.

BY ADV. SRI.P.N.KRISHNANKUTTY ACHAN(SR.))
SRI.T.SETHUMADHAVAN) for Suppl.R2 to R5,R7
and R8

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 07/09/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

KSS

ORDER ON C.M.P.NO.480/1995 IN S.A.NO.305/1994

DISMISSED

7/09/2007

SD/- M.SASIDHARAN NAMBIAR, JUDGE

/TRUE COPY/

P.S.TO JUDGE

KSS

M.SASIDHARAN NAMBIAR, J.

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C.M.Appl.537/07, I.A.1574/07 &
I.A.1575/07 in S.A.No.305/1994
&
S.A.No.305/1994
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Dated this the 7th day of September, 2007

O.R.D.E.R

These petitions are filed to condone the delay to set aside the abatement and to implead supplemental appellant as additional second appellant, being the legal heir of original appellant who died on 5.6.2004. The application is filed after a delay of 1036 days. Case of the petitioner is that O.P.16966/1997 was pending and impleading application was filed only in that case and by mistake no impleading application was filed in the second appeal and it was not wilful; but due to an oversight and therefore delay is to be condoned and abatement is to be set aside and he is to be impleaded. Petition is opposed by respondents.

2. On hearing the learned counsel appearing for the petitioner and respondents, it is seen that

the suit itself is only one for permanent prohibitory injunction restraining respondents from trespassing into the plaint schedule property and no decree was granted in his favour by trial court or first appellate court. It is also admitted that claim for tenancy raised by appellant was disputed and it is pending before this court in C.R.P.193/2007. It is submitted that the original order granted in favour of appellant was set aside by Appellate Authority (Land Reforms) and remanded to the Land Tribunal, which is challenged before this court originally by filing a writ petition and in view of the decision of the Apex Court it was withdrawn and a Civil Revision Petition is pending. As the suit is only for injunction, at this stage I do not find it necessary to condone delay or to set aside the abatement. The petitions are dismissed as abated. Consequently

the appeal is dismissed. It is made clear that dismissal of the appeal will not prevent appellant from seeking a decree on the strength of title, if any.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006